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Remarks

This amendment is made for the purpose of placing the claims in better form for consideration by the Examiner, in particular to resolve the informalities involved in the 35 USC 101 and 35 USC 112 rejections, and entry of this amendment under the provisions of 37 CFR 1.116 is respectfully requested.

Responsive to the rejection of claims 1-35 under 35 USC 101, the claims have been amended in a manner which is believed to not include the patient as part of the claimed invention. Favorable action on the amended claims is respectfully requested.

Responsive to the rejection of claims 31 and 32 under 35 USC 112, claim 31 has been amended to correct an obvious typographical error.

Reconsideration of the rejections of claims 1, 3, 7-11, 13, 16-18, 21, 22, 26, 29, 30, 33 and 51-53 under 35 USC 102 in view of Braband and of claims 2, 4-6, 12, 14, 15, 19, 20, 23-25, 27, 28, 31, 32, 34 and 35 under 35 USC 103 in view of Braband is respectfully requested for the following reasons. It is submitted that Braband does not disclose a plurality of fiducials in the manner claimed by applicants. The term "fiducials" is defined on page 4 of the instant application to represent markers suitable for a particular type of imaging. It is respectfully submitted that the angle indicators disclosed by Braband do not come within this definition. Furthermore, the angle indicators of Braband do not define a predetermined path

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relative to a support structure along which path a visible light beam travels as called for in some of the claims of the instant application, and the angle indicators of Braband are not disclosed as being situated in the image plane of the imaging machine as called for in other claims of the instant application.

In view of the foregoing, claims 1-35 and 51-53 are believed to patentably distinguish over Braband within the meaning of 35 USC 102 and 35 USC 103.

Reconsideration of the rejections of claims 1, 4, 6-13, 16-19, 21-23, 26, 28-33, 36-38, 40, 42, 43 and 46-53 under 35 USC 102 in view of Rapoport and of claims 2, 3, 5, 14, 15, 20, 24, 25, 27, 34, 35, 39, 41, 44 and 45 under 35 USC 103 in view of Rapoport is respectfully requested for the following reasons. Applicant's invention relates to a method and apparatus for determining the optimal path to an image of a subsurface target defined by images of markers in a CT or MRI image and a direction of a visible light beam aimed at the target. As pointed out on page 2 of the instant application, the present invention recognizes the desirability of avoiding prior art approaches which include marker frames implanted in the patient. The cited Rapoport patent is an example of such prior art. The method and apparatus disclosed by Rapoport utilizes markers  $M_1$ - $M_4$  fixedly embedded within the patient's skull (vol. 4, lines 22-25). In sharp contrast, applicants' invention does not employ markers fixedly embedded in the body of a patient. Instead, as shown for example in Fig. 1 of the instant application, the support structure 12 carrying the

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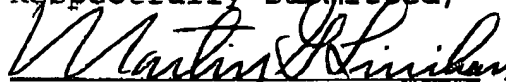
fiducials 14 has a size and shape locating the fiducials outwardly of the surface which the target is below and defining an air gap between the fiducials and that surface. This clearly is not disclosed by Rapoport who fixedly embeds markers  $M_1$ - $M_4$  in the patient's skull. Independent claims 1, 16, 26, 36, 46 and 51 have been amended to point out this significant distinction over Rapoport.

In view of the foregoing, claims 1-53 as amended are believed to patentably distinguish over Rapoport within the meaning of 35 USC 102 and 35 USC 103.

Replacement claim pages are enclosed herewith.

Favorable action on this application is respectfully requested.

Respectfully submitted,



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